however, may not be the result. Mr. Freeman puts it in these words: "The failure to serve process may leave the defendant in ignorance of subsequent proceedings as well as of the entry of judgment, and his first knowledge may be brought to him through a claim that he has lost title to his property by a sale made by authority of the judgment, and that at such sale the property has been struck off at a grossly inadequate price. That one was indebted ought not in equity to preclude him from relief from spoliation, accomplished by the aid of a proceeding judicial in form but lacking the essential element of all judicial proceedings,—jurisdiction of the person condemned. Hence the mere want of a defense on the merits ought not in all cases to be a sufficient answer to a demand for relief, where process was not served on the complainant and he was without knowledge of the pendency of the action." 2 FREEMAN, JUDGMENTS (4th ed.), 875. See also 23 CYC. 1031. The following cases adopt this position: *Mills* v. *Scott* (C. C.), 43 Fed. 452; *Bell* v. *Williams,* 1 Head (Tenn.) 229; *Ryan* v. *Boyd,* 33 Ark. 778; *Blakeslee* v. *Murphy,* 44 Conn. 188; *Mosher* v. *McDonald & Co.,* 128 Iowa 68.

LARCENY—EVIDENCE—POSSESSION OF STOLEN PROPERTY.—The defendant was convicted of the larceny of a mule. The principal evidence was that he was found in possession of the mule four days after it was last seen in the pasture of the owner, and that the defendant explained this possession by saying that he purchased the mule from a stranger. *Held,* the evidence was insufficient to sustain a conviction. *State* v. *McKinney* (1907), — Kan. —, 91 Pac. Rep. 1068.

The majority opinion, in the principal case, recognizes the general rule that unexplained possession of stolen goods is relevant to show that the person having such possession is the taker. WIGMORE ON EVIDENCE, Vol. 1, § 152. But it is argued that the possession of the stolen goods was explained by the explanation of the defendant. JOHNSTON, C. J., MASON and BURCH, J. J., dissent on the ground that whether or not the possession was explained by the defendant was a question for the jury. *State* v. *Seymour,* 7 Idaho 257, 61 Pac. 1033, seems to uphold the majority opinion, but that case is practically overruled by a later case in the same state. *State* v. *Ireland,* 9 Idaho 686, 75 Pac. 257. In *Porter* v. *State,* 45 Tex. Cr. Rep. 66, 73 S. W. 1053, the possession of the stolen goods was not recent. In *Watts* v. *People,* 204 Ill. 233, 68 N. E. 563, the possession was not exclusive. However, see *Stringer* v. *State,* 135 Ala. 60, 33 So. 685, and *Calloway* v. *State,* 111 Ga. 832, 36 S. E. 63, which are not so easily distinguished. Many decisions are to be found which seem in conflict with the principal case, and which hold that it is a question for the jury to determine whether the possession of the stolen goods is or is not explained. *R.* v. *Exall,* 4 F. and F. 922; *Underwood* v. *State,* 72 Ala. 220; *People* v. *Titherington,* 59 Cal. 598; *Young* v. *State,* 24 Fla. 147; *State* v. *Hale,* 12 Ore. 352, 7 Pac. 523; *Flores* v. *State,* 27 Tex. App. 475, 9 S. W. 772; *State* v. *Walters,* 7 Wash. 246, 34 Pac. 938; *Price* v. *Commonwealth,* 21 Grat. 846; *Oxier* v. *U. S.,* 1 Ind. Ter. 85, 38 S. W. 331; *People* v. *Farrington,* 140 Cal. 657, 74 Pac. 288.